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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1100~~ 87

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

Petitioner,

—VS.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

Petitioner,

—VS.—

NATIONAL LABOR RELATIONS BOARD and GENERAL ELECTRIC COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT, GENERAL ELECTRIC COMPANY, IN OPPOSITION

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Respondent, General Electric Company, opposes the petitioner's request for a writ of certiorari to review the orders of the United States Court of Appeals for the Second Circuit: 1) denying the Union's motion to intervene in an enforcement proceeding instituted by the National Labor Relations Board against General Electric Company and 2) dismissing a Union petition for review of a National Labor Relations Board's order finding the General Electric Company guilty of violating the National Labor Relations Act as amended.

I

The motion by the Union to intervene in the enforcement proceedings instituted by the National Labor Relations Board against General Electric Company, which proceeding seeks to compel the Company to comply with an order finding it guilty of violating the National Labor Relations Act as amended, is plainly an attempt by a private party to share the Board's responsibility in the enforcement of "public rights" (*Aluminum Ore Co.* v. *National Labor Relations Board*, 131 F. 2d 485 (CA 7, 1942)).

The National Labor Relations Board itself has opposed intervention where an unfair labor practice has been found and the charging party seeks to intervene in a court proceeding instituted by the respondent's petition to review the order issued against it. As the Board stated in footnote 2 of its memorandum to this Court in *UAW* v. *Scofield, et al.*, No. 650, October Term 1964:

> "For the charging party does not stand to incur any liability, and its only purpose is to help the Board per-

> form a function, i.e., uphold its order, which the act confers exclusively upon the Board. In this situation intervention has usually been denied, but the charging party has been permitted to participate as *amicus curiae*."

To the extent that petitioner claims that the National Labor Relations Board's order should be phrased differently than it was, the Union is attempting to pursue a purely private objective—not the general vindication of a public right (*Amalgamated Utility Workers* v. *Consolidated Edison*, 309 U. S. 261 (1940)). Intervention by the Union would thus present a conflict as to who is actually in control of the conduct of the proceedings brought to enforce the order of the administrative agency against the Company. It would interfere with the exclusive jurisdiction which Congress has vested in the National Labor Relations Board to prevent and redress unfair labor practices (Section 10(a) of the National Labor Relations Act as amended, 29 U. S. C. A. 160(a)), and would give the Union a right as a petitioner to act independently and possibly contrary to the judgment of the National Labor Relations Board (*Penello* v. *Burlington Industries Inc.*, 54 L. R. R. M. 2165 (D. C. W. D. Va., 1963)). Even the petitioner recognizes that the Board's usual practice is to oppose intervention of the nature sought here (Petition, p. 5). The Board's position below on this point, however, was at variance with this usual practice.

The decision of the Court of Appeals for the Second Circuit in *International Union* v. *Fafnir Bearing Co. et al.*, 339 F. 2d 801 (1964), *cert. granted*, No. 833, October Term 1964, held that the charging party therein was not entitled to intervene *as a matter of right* in the judicial proceeding to review the Board's order against the respondent. That

holding emphasized the discretionary quality of the Court's function in this area. Surely, in the case at bar, the Union's request for leave to intervene in the enforcement proceeding brought by the Board against the Company herein called for the exercise of the court's discretion, which should not be disturbed by granting this writ (See *Moore's Federal Practice, Second Edition,* ¶24.10; *Carpenter* v. *Wabash Ry. Co.,* 103 F. 2d 996 (CA 8, 1939), *rev'd on other grounds,* 309 U. S. 23 (1940)).

This Court has said that "to permit a multitude of [permissive] interventions may result in accumulating proofs and arguments without assisting the Court" (*Allen Calculators Inc.* v. *National Cash Register Co.,* 322 U. S. 137, 141-42 (1944)). Judge Wyzanski has referred to this feature of the question in the following language:

> "It is easy enough to see what are the arguments against intervention where, as here, the intervenor merely underlines issues of law already raised by the primary parties. Additional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, objectives, *briefs, arguments,* motions and the like which tend to make the proceeding a Donnybrook Fair. Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief *amicus curiae* and not by intervention." (Italics ours) (*Crosby Steam Gage and Valve Co.* v. *Manning, Maxwell and Moore, Inc.,* 51 F. Supp. 972, 973 (D. Mass., 1943)).

In the case at bar, intervention by the union would have a highly undesirable and prejudicial effect on the rights of the Company and would merely complicate the proceedings before the court in its deliberations (See Fed. R. Civ.

P. 24(b)). It would permit the Union to submit briefs covering the entire subject matter of this case without limit, as indeed the Union was allowed to do before the Trial Examiner of the Board and before the Board itself. Thus, before the administrative tribunal, the Company was confronted with a main brief before the Trial Examiner of 396 pages submitted by the General Counsel for the Board and of 214 pages submitted by the Union. General Counsel's reply brief before the Trial Examiner was 52 pages and the Union's reply brief was 51 pages.

The Union does not deny that its objective in this case, apart from the matter of the form of the order against the Company, is identical with the objective of the Board. Yet if the Union were granted the right to intervene, as now sought, it would be accorded a co-equal status with that of the National Labor Relations Board and granted the unrestricted right to pursue its private interests. In this manner, the Company would be "whipsawed" by the adverse position of the Union pursuing its private interests and that of the National Labor Relations Board, pursuing its public interests.

This inequitable result would work an injustice on the Company by permitting separate and independent briefs in support of the Board's decision, and permitting separate and independent oral arguments before the Court. It was within the province of the Court of Appeals for the Second Circuit to weigh these practical considerations and to deny the Union's motion for leave to intervene in the National Labor Relations Board's enforcement petition against the respondent Company.

II

The Union petition to this Court raises the additional question as to its status as a petitioner in seeking to review the National Labor Relations Board's order against respondent Company. The essence of the Union's claim to aggrieved status is that the *form* of the Board's order is not couched in the language suggested by the Union. No important question of federal law is involved in this issue.

The substance of the Board's order, however, found that the Company had violated Sections 8(a)(1), 8(a)(3) and 8(a)(5) of the National Labor Relations Act as amended. Reading from petitioner's own brief (pp. 9-10), it is evident that the Union essentially seeks compliance with the Board's order, rather than reversal thereof.

This Court has stated that a proceeding brought to review a Board order under Section 10(f) of the Act "seeks not to require compliance with the Board's order but to overturn it" (*Amalgamated Utility Workers* v. *Consolidated Edison Company, supra,* at 266). If this were not the rule, litigants would be in a position to require complete court review of almost any order merely by including in the record an extravagant or unwarranted demand, and predicating its claim to being aggrieved on the refusal of its demand. This is what is being attempted here and plainly the attempt is based on a transparent pretext. For that reason, the Union petition for review was properly dismissed and this Court should not grant a writ directed to reviewing that dismissal.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari herein should be denied.

Respectfully submitted,

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